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09/986,264	11/08/2001	Pascal Simon	209858US55	6595

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EXAMINER

TRAN, SUSAN T

ART UNIT PAPER NUMBER

1615

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/986,264  
Filing Date: November 08, 2001  
Appellant(s): SIMON, PASCAL

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Steven P. Weihrouch  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/01/05 appealing from the Office action  
mailed 04/04/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,508,604	Bechmann et al.	01-2003
6,669,387	Gruenbacher et al.	12-2003
WO 01/54661	Beck et al.	08-2001

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bechmann et al. (US 6508604), in view of Beck et al. (WO 01/54661 A1).

Bechmann teaches an article comprising a fluid or solid containing cell or capsule within a substrate structure (Col. 2, lines 13-27). The cell contained within the article is burstable upon pressure or an opening means (Col. 3, lines 8-50). The article can dispense solid or liquids for mixing different materials to cause chemical reaction or exposing the materials to cause reactions that produce energy or heat flow to aid in the end use of the product (Col. 3, lines 16-50). The cell or capsule contains a fluid or solid, particles, powders, granules or a gas (Col. 3, lines 51-63). The cells can be any shape or dimension and rupture upon applying pressure (Col. 4, lines 2-49). The cell has various means for aiding in the bursting of the cell (Col. 6, line 10 - Col. 7, line 53). The body of the article can be made of various materials such as fibrous pads and absorbent materials (Col. 8, lines 40-67). The article can also be packaged in a

container (Col. 7, line 54 - Co. 8, line 39). The article further comprises a flow control means, which can be a grid like material inside the article to aid in controlling the flow and distribution of a liquid out of the inner cell compartment (Col. 9, lines 1-61).

Bechmann does not expressly teach an outer substrate that has a cosmetic composition associated with it.

Beck teaches a cleansing article comprising a substrate sheet with two layers, a cleansing component disposed adjacent to the substrate sheet and a therapeutic component disposed adjacent the substrate sheet (Page 2-3, Invention Summary). The article is used to cleanse and condition the skin and hair by wetting the article with water and contacting the skin or hair with the wetted article. (Page 2-3, Invention Summary). Various materials can be used for the first and second layer of the substrate sheet (Pages 4-11). The layers are bonded together in various ways as well (Pages 11-12). The cleansing component can be a surfactant of various types (Pages 12-22). The therapeutic agents are defined on Pages 23-34. The article can further contain multiple chambers containing different surfactants and/or conditioning agents (Page 36). The concept of the Beck reference is a multi-layer substrate comprising at least two layers wherein a surfactant and conditioning therapeutic agents are associated with the substrate so that when wetted the article can cleanse and condition the hair and skin of the user. The reference teaches a suitable substrate composition that is known to treat the skin.

At the time the invention was made, it would have been obvious to a person of

ordinary skill in the art to combine the concept of a multi-layer substrate with a surfactant and/or therapeutic agents disposed between the layers so that when wetted provide a cleansing article for the skin with the concept of a multi-layer substrate with a capsule to deliver a liquid to provide a cleansing article for the skin. Therefore, it would be obvious to prepare an article that has a multi-layer substrate with a surfactant and/or therapeutic agent associate with the substrate wherein the device also has a capsule that is breakable to deliver the liquid needed to wet the device and provide a cleansing property. Both references teach articles that are used to treat or condition the skin. Bechmann teaches the article containing the capsule to deliver a liquid used to treat, cleanse or condition the skin. Beck teaches one substrate that suitable for skin cleansing that could be used to form the article of Bechmann.

One of ordinary skill in the art would have been motivated to do this to provide a disposable, easily stored, portable device that can benefit the user by providing a specific outcome when used (cleansing, polishing, deodorizing, or disinfecting (Bechmann, Col. 3, lines 8-35). Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

Claims 52-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bechmann et al. (US 6508604) in combination with Beck et al. (WO 01/54661 A1) and Gruenbacher et al. (US 6669387).

The teachings of Bechmann and Beck are discussed above. Bechmann and Beck do not expressly teach 3 or more layers for their articles.

Gruenbacher teaches an applicator with an internal cavity that contains a reservoir that is rupturable wherein the material contained in the reservoir is distributed to the articles surfaces (Col. 2, lines 20-36). The article can be a mitt, pad or wipe (Col. 3, line 1). The applicator has front outer and inner surfaces as well as back outer and inner surfaces (Col. 3, lines 41-67). The reservoir contains liquids, gels, lotions, creams, powders or solids (Col. 4, lines 17-25). This reservoir can be in various locations throughout the articles and more than one reservoir can be used (Col. 5, lines 27-48). The article further contains a flow restriction layer, which controls the rate of flow of the liquid through the outer substrates (Col. 6, lines 51-67). Still further, an absorbent layer or layers can also be included in the article (Col. 9, line 57 - Col. 10, line 41). Barrier layers are also included to protect the users hand from the solid or liquid contained in the reservoir (Col. 10, lines 43-67). The back panel of the article can be an absorbent material to wipe off excess product during use (Col. 12, lines 1-54). Water is one material that can included in the reservoir of the article (Col. 13, lines 50-57).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to prepare an article containing multiple layers, of both absorbent or permeable layers as well as barrier or impermeable layers further containing a liquid in a internal reservoir to be distributed to the outer substrates to provide a cleansing article for various surfaces.

One of ordinary skill in the art would have been motivated to do this to provide an article that applies the product directly on the target surface with greater efficiency and

avoids the product contacting the surface adjacent to the target surface that may be sensitive to the material in use. The article can eliminate or reduce performance and safety issues (Gruenbacher, Col. 14, lines 22-34). Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

**(10) Response to Argument**

Appellant's arguments filed 11/01/05 have been fully considered but they are not persuasive.

Appellant argues that Bechmann does not describe a cosmetic composition associated with a substrate wherein the liquid contained in the breakable capsule wets the composition upon breakage. Contrary to the appellant's argument, it is noted that Bechmann does teach the features appellant relied on, see for example column 3, lines 8-20, article comprising a cell system with at least one burstable cell filled with an active composition. The cells are ruptured by one means or another thus dispensing fluids in the cells to contact and disperse onto a target surface.

Appellant argues that Bechmann and Beck would not have been combined absent hindsight reconstruction of the present claims because the two publications teach completely different solutions for delivering liquids and cosmetic compositions from an article. Bechmann is directed to controlling delivery of liquid compositions, and Beck is directed to completely wetting an article with water. Appellant further adds, nowhere does Beck desire to control the amount of water to which the article is exposed, because Beck does not want to control the amount of water using cells, as in



Bechmann. In response to applicant's argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Appellant's attention is called to page 36, last paragraph, Beck teaches the therapeutic or cleansing benefit may be released from the articles' chambers by popping, bursting, squeezing.

Bechmann teaches an article comprising a cell system with at least one burstable cell filled with an active composition. The cells are ruptured by one means or another thus dispensing fluids in the cells to contact and disperse onto a target surface (column 3, lines 8-20). Accordingly, it would have been obvious to one of ordinary skill in the art that Bechmann and Beck do teach similar method to deliver the therapeutic or active agent to the user, namely, by rupturing the cell/chambers. Regarding the argument that the article taught by Beck must be wetted with water before use, while the article taught by Bechmann is dried, it is noted that nothing in Bechmann prevent the user from wetting the article before use. In other word, the article taught by Bechmann may already be wetted before the active composition in the cell released.

Appellant argues that the combination of Bechmann and Beck does not suggest a container including "means for breaking at least one breakable capsule". However, it is noted that at column 6, lines 10-67, Bechmann teaches "easy-opening means",

including an inverted protrusion that comes inside out and bursts to release the cells contents.

Appellant argues that Gruenbacher does not add anything of substance to the combination of Bechmann and Beck. Appellant further added the combination of Gruenbacher with Bechmann and Beck is not directed towards the purposes and objectives of the present invention, nor do the cited references recognize the advantageous results that can be achieved by the combined features set forth in the present claims. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gruenbacher is relied upon for the teaching of rupturable article that contains three or more substrate layers. Gruenbacher also teaches the advantageous results including facilitate spreading or dispersal of the product upon a target surface, reduce the waste and mess produced by currently utilized application methods, and efficacious combinations of a substance and a substrate for a given task. Thus, it would have been obvious to one of ordinary skill to modify the article of Bechmann and Beck in view of the teachings of Gruenbacher to obtain the claimed invention.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



S. Tran  
Patent Examiner AU 1615

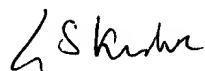
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